

IN THE MATTER OF	:	BEFORE THE
WILLIAM J. HAMMERASH, JR. &	:	HOWARD COUNTY
CATHERINE E. COOKE	:	BOARD OF APPEALS
Petitioners	:	HEARING EXAMINER
	:	BA Case No. 06-008V

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DECISION AND ORDER

On April 24, 2006, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of William J. Hammerash, Jr., and Catherine E. Cooke, Petitioners, for a variance to reduce the 10-foot side setback to 1.6 foot for the construction of a garage addition in an R-20 (Residential – Single) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the “Zoning Regulations”).

The Petitioners certified that notice of the hearing was advertised and that the subject property was posted as required by the Howard County Code. I viewed the subject property as required by the Hearing Examiner Rules of Procedure.

The Petitioners were not represented by counsel. William J. Hammerash, Jr. testified in support of the petition. No one appeared in opposition to the petition.

FINDINGS OF FACT

Based upon the preponderance of evidence presented at the hearing, I find the following facts:

1. The Petitioners are the owners of the subject property, known as 5106 Bonnie Branch Road, which is located in the 1st Election District on the north side of Bonnie Branch Road about 200 feet south of Hurst Road and 1,500 feet northeast of Maryland Route 103 in Ellicott City (the “Property”). The Property is referenced on Tax Map 31, Block 15 as Parcel 107.

2. The Property is roughly rhomboid in shape and consists of about one acre. The Property has about 161.44 feet of frontage on Bonnie Branch Road. The lot is 297.66 feet deep on its west side and 279.96 feet deep on its east side. At its rear, the Property is 148.5 feet wide.

The Property is improved with a 2½ story, single-family detached dwelling that is about 30 feet wide and 30 feet deep. The house is located about 36 feet from the Bonnie Branch Road frontage, 25.6 feet from the east side lot line, and 98.6 feet from the west side lot line. Directly behind the house is a large in-ground swimming pool and patio. In the northwest portion of the Property is an outbuilding labeled on the location drawing as a garage.

Access to the Property is gained via two gravel drives: one beginning at the center of the lot and turning west, the other beginning on the east side of the lot and leading to the east side of the house. The topography of the Property slopes gently down to the rear.

3. The Petitioners propose to construct a two-car garage onto the east side of the house that will be 24 feet wide and about 30 feet deep. The Petitioners also plan to construct a living room/bedroom addition onto the west side of the house and a dining room addition onto the rear of the house. When constructed, the garage will be situated about 1.6 feet from

the east side lot line, resulting in an encroachment of about 8.4 feet into the 10-foot side setback required by Section 108.D.4.d(1)(6).

4. Vicinal properties are also zoned R-20 and are residential lots improved with single-family homes. According to the property map attached to the petition and the aerial photograph attached to DPZ's April 13, 2006 memorandum, the Property is one of the largest and widest of the lots in the area. The Petitioners' home is presently about the same size as other homes in the area.

The adjacent lot to the north is a large, wooded open space parcel.

6. The Petitioner testified that several architects have advised that the garage be placed on the east side of the house so that it does not block access to the outbuilding in the northwest portion of the site. He stated that a smaller garage would make it difficult to open car doors. He claimed that a one-car garage would affect the resale value of his home. He introduced letters from three neighbors indicating that they had no objection to the variance.

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, I conclude as follows:

1. The standards for variances are contained in Section 130.B.2.a of the Regulations.

That section provides that a variance may be granted only if all of the following determinations are made:

(1) That there are unique physical conditions, including irregularity, narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

For the reasons stated below, I find that the requested variance does not comply with Section 130.B.2.a(1), and therefore must be denied.

2. The first criterion for a variance is that there must be some unique physical condition of the property, e.g., irregularity of shape, narrowness, shallowness, or peculiar topography that results in a practical difficulty in complying with the particular bulk zoning regulation. Section 130.B.2(a)(1). This test involves a two-step process. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. Ap.. 28, 322 A.2d 220 (1974).

With respect to the first prong of the variance test, the Maryland courts have defined “uniqueness” thusly:

“In the zoning context, the ‘unique’ aspect of a variance requirement *does not refer to the extent of improvements upon the property*, or upon neighboring property. ‘Uniqueness’ of a property for zoning purposes requires that the subject property have an inherent characteristic *not shared by other properties in the area*, i.e., its shape, topography, subsurface condition, environmental factors, historical significance, access or non-access to navigable waters, practical restrictions imposed by abutting properties (such as obstructions) or other similar restrictions. In respect to structures, it would relate to characteristics as unusual architectural aspects and bearing or party walls.”

North v. St. Mary’s County, 99 Md. App. 502, 514, 638 A.2d 1175 (1994)(italics added).

In this case, the Petitioner has not shown that the Property is in any way unique such that the side setback of Section 108.D.4.d(1)(6) will disproportionately impact it. The evidence is undisputed that the Property is equal or larger in size than many other properties in the neighborhood. What’s more, many other properties in the area are as narrow as or narrower than the Property. The size and shape of the Property are not unique.

In addition, there appears to be ample room to the west and rear of the Petitioners’ home on which a garage could be built within the Property’s building envelope. The Petitioner argues that this is not practical because locating the garage to the west of the house would block access to the outbuilding at the rear of the Property. As stated above, however, I may not consider the location of the improvements on the Property as a unique physical condition of the land for the purposes of the variance requirements. Any practical difficulty must relate to the uniqueness of the land itself, and not to the improvements upon it, including the orientation or layout of the home or other structures. I must therefore view the Property as if the improvements did not exist. The reason for this rule is to prevent a property owner from creating a need for a variance.

In this case, the actual reason that the Petitioners cannot position the garage to the west or rear of their home is because they plan to build other additions in those spots. Their hardship, therefore, is entirely self-imposed. Even so, there appears to be ample room elsewhere on the one-acre lot on which to locate a garage.

Consequently, the Petitioners have not produced sufficient evidence to pass the first prong of the variance test; that is, they have not shown that the Property itself has any unusual or unique characteristic that necessitates the variance requested. For this reason, the variance request fails to comply with Section 130.B.2.a(1).

Moreover, the Petitioners have not shown that they will experience a “practical difficulty” if the variance is not granted. The Petitioners’ home is already the same size as most in the vicinity. When the garage and two additions are completed, the home will be one of the larger in the area. The grant of the variance would therefore enable them to build an even larger home and gain a benefit not possessed by other homeowners. Consequently, the effect of the side setback cannot be considered “unnecessarily burdensome” for the purposes of Section 131.B.2.a(1).

Conclusion

It is well established in Maryland law that any practical difficulty must relate to the land, and not to the personal convenience of the particular owner of the land. *Cromwell*, id. While it may be desirable for the Petitioners to be able to construct a garage and additions on their Property, it must be accomplished within the restrictions of the Zoning Regulations.

It is not the role of zoning, nor should it be, to accommodate the personal wants or circumstances of each property owner. Rather, the purpose of zoning is to promote the

orderly development of land through the imposition of uniform regulations and standards. Variances to these standards are therefore to be sparingly granted, and only under exceptional circumstances. *Cromwell*, 651 A.2d at 430.

Simply put, if I were to grant a variance to these Petitioners to accommodate their personal desires and circumstances, then I must do so for every property owner who is similarly situated. Once granted, a variance is permanent and irreversible. Under such a system, variances would become the rule, and the Zoning Regulations would be rendered meaningless.

In this case, the Petitioners argued that, because their neighbors do not object to the variance request, it will have no detrimental effect on the neighborhood. While this may be true, the impact of the variance is not the only criterion I must consider. Indeed, the Maryland courts have clearly instructed that, if a variance request does not pass the initial “uniqueness” test, “the process stops here and the variance is denied.” *Cromwell*, 651 A.2d at 426

The Petitioners in this case have not presented sufficient evidence to show that exceptional circumstances exist to warrant the grant of a variance to the setback requirements. Consequently, I am compelled to deny the request.

ORDER

Based upon the foregoing, it is this **23rd day of May 2006**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED:**

That the petition of William J. Hammerash, Jr., and Catherine E. Cooke for a variance to reduce the 10-foot side setback to 1.6 foot for the construction of a garage addition in an R-20 (Residential – Single) Zoning District is hereby **DENIED**.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**

Thomas P. Carbo

Date Mailed: _____

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.